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**APR 22 2008**

To: The Missoula County Commissioners  
And  
The Ravalli County Commissioners

Ravalli County Commissioners

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The Missoula Rural Fire District is asking for a mill levy increase of 38 mills. They received a mill levy of 80.80 in 2006 and 91.130 in 2007.

As a rural resident I paid taxes in the Hamilton Rural Fire District, the Florence Rural Fire District and now to the Missoula Rural Fire District . I am also a former Ravalli County Attorney and a retired District Judge who served both of the Counties. We live in a government with a constitution governing our actions.

From a constitutional standpoint is the MRFD entitled to that levy increase?  
I think the tax levy is unconstitutional

In 1895 the legislature was asked by volunteer rural firefighters to help them get fire fighting equipment. The legislature answered by giving them statutes permitting the formation of a rural fire district and granting the county commissioners permission to make a tax levy. In 1947 those provisions were contained in Section 11-2008 R.C.M. 1947. In 1957 the legislature amended the provisions allowing the county commissioners to establish a rural fire district by requiring notice to the landowners involved. Nothing was done about the tax levy. It remained the same with these words:

“At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities ”

Today the numbers have been changed to 7-33-2109 M.C.A. A few words have been changed. It now reads:

“At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-10-420, levy a special tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities,”

Those few changes do not make the new statute constitutional if it was not so before. It is necessary therefore to look at section 11-2008 and to see what the Montana Supreme Court had to say about that section.

The Montana Supreme Court heard an action brought by the Great Northern Railway Co. against Roosevelt County , 134 Mont. 355. That action was started in 1954. (Note the section 11-2008 was amended in 1957 as above stated.) The District Court decided in favor of the railway as did the Supreme Court on Dec. 3 1958. .

1. The first part of the document is a header section containing the following information:
 

- Project Name: [REDACTED]
- Project Number: [REDACTED]
- Project Date: [REDACTED]
- Project Location: [REDACTED]
- Project Status: [REDACTED]
- Project Manager: [REDACTED]
- Project Sponsor: [REDACTED]
- Project Stakeholders: [REDACTED]
- Project Objectives: [REDACTED]
- Project Scope: [REDACTED]
- Project Budget: [REDACTED]
- Project Risk: [REDACTED]
- Project Communication: [REDACTED]
- Project Reporting: [REDACTED]
- Project Monitoring: [REDACTED]
- Project Evaluation: [REDACTED]
- Project Closure: [REDACTED]

2. The second part of the document is a table containing the following information:
 

Item	Description	Quantity	Unit Price	Total Price
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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35	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
36	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
37	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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39	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
40	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
41	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
42	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
43	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
44	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
45	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
46	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
47	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
48	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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54	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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64	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
65	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
66	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
67	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
68	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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The Great Northern action was decided for the reason that Due Process of Law was denied the taxpayers because of the lack of any notice.

To determine if section 7-33-2109 M.C.A. is still unconstitutional it is best to consider another important Montana Supreme Court decision. The amendments did not alter the provisions for the tax levy. But BACUS -vs.- LAKE COUNTY, 138 Mont. 69 clearly shows that the tax levy provision is unconstitutional for at least two other reasons. The rural fire district levy is for a special tax. In the BACUS action the Supreme Court said this:

“So the Great Northern case, supra, concluded that the tax imposed by the statute in question in that case was a special tax and therefore that adequate provisions for notice and hearing must be present in the statute itself to withstand the constitutional attack with respect to due process.”

Article III, Section 1 of our constitution provides:

“Section 1. **Separation of powers.** The power of the government of this state is divided into three distinct branches -- legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.”

In commenting on that provision the Supreme Court in the BACUS case said this:

“The law-making power may not be granted to an administrative body to be exercised under the guise of administrative discretion. Accordingly, in delegating power to an administrative body with respect to the administration of statutes, the legislature must ordinarily prescribe, a policy, standard or rule for their guidance and must not vest them with an arbitrary and uncontrolled discretion with regard thereto, and a statute or ordinance which is deficient in this respect is invalid. In other words, in order to avoid the pure delegation of legislative power by the creation of an administrative agency, the legislature must set limits on such agency's power and enjoin on it a certain course of procedure and rules of decision in the performance of its function, and, if the legislature fails to prescribe with reasonable clarity the limits of power delegated to an administrative agency, or if those limits are too broad, its attempt to delegate is a nullity.”

Now the commissioners are in the executive branch. Here the legislature has delegated the power to determine the amount of a tax. That is a legislative function and the above quotation renders that delegation a nullity.

The BACUS case points out two distinct problems with the delegation of power.

This is what the Supreme Court said about 11-2008 R. C. M. 1947 and it also applies to 7-33-2109 M.C.A.

“For the foregoing reasons, the weight of authority, and the rules of our jurisprudence. It appears beyond question that R.C.M. 1947 section 11-2008, and R.C.M. 1947 section 11-2009, before the 1957 amendment, was and is unconstitutional as being in direct conflict with section 27, Article III, Montana Constitution and the first clause of the Fourteenth Amendment to the Constitution of the United States of America. “

Those two constitutional provision refer to Due process of law.

“No person shall be deprived of life, liberty, or property without due process of law. “

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Why am I sending this to you?

You have been making this tax levy for several years. You do so because the people in office before you did so. I submit the reason is because rural fire districts are beneficial for the rural residents and because they want fire protection. I know I do. But years ago the tax levy was only a few mills. In Missoula you now are asked to make a tax levy that is close to the one you make for school districts. Also from what I read in the newspaper the fire district now provides medical service, 65% of the work. But the rural fire district law does not cover medical work. When you make the levy, as you now do, you assume a legislative power. You add to what the firefighters may do. Also from what I know of the district boundaries you do not tax all persons in the area -- only those who ask to join the district. The newspaper says the district wants the extra money so the firefighters can use a defibrillator and provide cardiac care to the residents. But note the statute says THE PURPOSE OF THE TAX LEVY IS TO PROVIDE FIRE PROTECTION FACILITIES.

The Montana Attorney General is required to give opinions on matters like this. Why not send him this paper and ask him for an opinion.

What is really needed is new legislation. You and the fire district officers should ask for legislation that covers the way the district wants to operate.

*Gardner*

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Florence, MT 59833-6026

The first part of the report is a general description of the project. It includes the objectives, the scope, and the methodology. The second part is a detailed description of the results. It includes the data, the analysis, and the conclusions. The third part is a discussion of the results. It includes the strengths and weaknesses of the study, and the implications for future research.

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